

10 QUINTARA BIOSCIENCES, INC.,

11 Plaintiff,

No. C 20-04808 WHA

12 v.

13 RUIFENG BIZTECH INC., et al.,

14 Defendants.

**15 ORDER DENYING DEFENSE
16 COUNSEL'S REQUEST FOR COVID-
17 19 VACCINE EXEMPTION FOR IN-
18 PERSON ARGUMENTS AND TRIAL**

19 Defense counsel, with trial imminent, has filed a motion requesting to "bypass" this
20 Court's order that everyone be fully vaccinated against COVID-19 in order to participate in in-
21 person civil proceedings. Counsel has not proffered an appropriate basis for such an
22 exemption. The motion is **DENIED**.

23 Judge Alsup has conducted eight in-person trials during the COVID-19 pandemic. Three
24 (all criminal trials) occurred prior to the roll out of any vaccine. Of the eight trials, three were
25 civil, one by bench and two by jury.

26 With regard to these civil trials and other in-person civil proceedings, and pursuant to the
27 case management authority and authority to regulate proceedings in the courtroom, Judge
28 Alsup required safeguards to protect the health of everyone in the courtroom. Everyone who
entered the courtroom had to be fully vaccinated and remain socially distant. Everyone in the
courtroom had to wear a mask at all times, with the sole exception when an attorney was

1 questioning a given witness (again, fully vaccinated) or otherwise making a statement to the
2 judge or jury, the attorney and witness were permitted (if they so chose) to remove their masks
3 so that the judge or jury could better hear them. The courtroom remained well ventilated
4 throughout the proceedings. A spare courtroom was used for the jury room to allow jurors to
5 spread out. These eight trials and other proceedings before Judge Alsup have not led to anyone
6 involved getting COVID-19.

7 The vaccination protocol aligns with the latest protocols for in-person argument instituted
8 by our court of appeals. The United States Court of Appeals for the Ninth Circuit now
9 mandates that: only counsel that are fully vaccinated — which includes a booster — may enter
10 the courtroom; counsel must remain masked unless speaking at the podium; and arguing
11 counsel must certify in advance that they are fully vaccinated and will comply with the
12 protocols.¹

13 On November 16, 2021, an order herein reiterated the health and safety rules for civil
14 matters described above (Dkt. No. 246). That order was filed one week after Attorney Reshma
15 Kamath appeared in our case as new counsel for defendants Ruifeng Biztech Inc., RF Biotech
16 LLC, Gangyou Wang, and Alan Li (Dkt. No. 239). Attorney Kamath soon filed a motion to
17 vacate or amend a previously stipulated protective order herein, and an expedited in-person
18 hearing was set for December 16 in an attempt to preserve our trial date of February 14, 2022
19 (Dkt. No. 255). The day before the December 16 hearing — and twenty-nine days *after* the
20 November order establishing this Court’s COVID-19 protocols — Attorney Kamath informally
21 requested an exemption from the COVID-19 vaccination requirement. This last-minute
22 request necessitated converting the hearing to telephone. An order on December 17 then
23 reminded the parties of the safety precautions currently in force and required any requested
24 vaccination exemption to be filed as a formal motion (Dkt. No. 262).

25 Attorney Kamath filed the instant motion requesting an exemption for trial and other in-
26 person proceedings, but she did not specify any religious or medical justification. Rather,

28 ¹ See Argument Protocols, cdn.ca9.uscourts.gov/datastore/general/2021/10/28/COVID-In-Person-
Hearing-Protocols.pdf (updated Dec. 30, 2021; last visited Jan. 6, 2022).

1 Attorney Kamath asserts “[t]he vaccines are only a fool-hardy method of big businesses, and
2 big pharma to make the big bucks in administering COVID-19 vaccinations and viruses.
3 Undersigned counsel will not become a guinea pig for big pharma’s extended lab tests with
4 unproven scientific basis of prevention of COVID-19 virus” (Br. 3). An exemption will not be
5 granted on this basis.

6 Attorney Kamath suggests either conducting a remote jury trial or having an in-person
7 trial with “layers of K-N-95 masks, and maintaining the twenty-feet (20-feet) social-distancing
8 in the courtroom” (Br. 2). But a remote trial would almost certainly prejudice plaintiffs and the
9 Court has found remote Zoom proceedings on anything other than a simple motion to be
10 fraught with technical difficulties (Opp. 3). The Court will not change its standard protocols
11 based on the meritless rationales presented in the instant motion.

12 Moreover, it simply will not suffice for counsel to offer to wear masks at all times and
13 remain socially distant in the courtroom. *First*, under her no-vaccination alternative, the
14 chances of Attorney Kamath contracting COVID-19 during the trial are greater than were she
15 vaccinated. The unvaccinated have an increased chance of contracting the disease and
16 suffering severe adverse effects compared to those who are vaccinated. Those being
17 hospitalized for COVID-19 are overwhelmingly the unvaccinated.² This heightened risk
18 would put the entire jury trial at risk, for juries are cleared for only a certain number of days.
19 Witnesses and counsel too plan around our trial window. We could not keep our trial on hold
20 until Attorney Kamath got well.

21 *Second*, her unvaccinated presence would increase the odds that the virus would be
22 passed onto members of the jury and others in the courtroom. *No* vaccine is perfect.
23 Breakthrough cases can occur. Having her in the courtroom without being vaccinated
24 increases the chances of a breakthrough case by a vaccinated juror or other vaccinated person.

25 *Third*, it is very challenging to seat a jury in civil cases during the pandemic. The
26 numbers needed to be summoned to seat a civil jury is dramatically larger now than before the

28 ² See Key Things to Know About COVID-19 Vaccines, www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html (last visited Jan. 6, 2021).

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1 pandemic. One way we have succeeded in doing so is by telling all of the panels everyone in
2 the courtroom at trial will be fully vaccinated. We would be unable to make this representation
3 under Attorney Kamath's proposal. Many more potential jurors would seek to be excused.

4 *Fourth*, under her proposal, when the time came for Attorney Kamath to question a
5 witness, she would need to keep her mask on while the other, vaccinated attorneys would be
6 free to remove their masks for an examination so they could be heard clearly by the jury. This
7 would inevitably raise an argument that the mask requirement was prejudicial to her and her
8 clients. Given these differences, the jury would also be quick to infer that she refused the
9 vaccine.

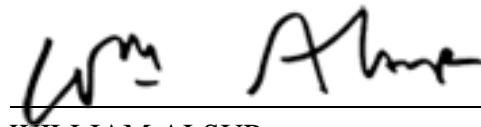
10 Attorney Kamath does not suggest that she would get tested every day of trial in lieu of
11 receiving the vaccine in her briefing. But, even if she had, that proposal would be insufficient.
12 PCR-testing facilities are overwhelmed, and results are typically not available until 24–48
13 hours later. At-home kits are very difficult to obtain and less accurate. Even if they were
14 readily available, taking a test everyday would not solve the problem that she, as an
15 unvaccinated individual, would place the entire proceeding at greater risk of mistrial.

16 The trial date is **VACATED** until such time as the COVID-19 pandemic is over, until
17 Attorney Kamath becomes fully vaccinated, or until further order of the Court. Our pre-trial
18 conference on Wednesday, February 9, 2022, is also **VACATED**.

19 If defendants and/or Attorney Kamath disagree with this order they are encouraged to
20 promptly seek a writ of mandate from our court of appeals. Attorney Kamath shall provide a
21 copy of this order to her clients within three days of receipt.

22 Because of the prejudice to Quintara caused by vacatur of the trial date, the Court will
23 allow Quintara to bring a regularly noticed motion for provisional relief, based on a sworn
24 record, the hearing to be conducted remotely. **IT IS SO ORDERED.**

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26 Dated: January 6, 2022.
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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE